

**STATE OF FLORIDA
PUBLIC COUNSEL
ACTIVITY REPORT**

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TELEPHONE UTILITIES

While Rate of Return regulation has been replaced by Price Cap regulation in Florida and in many other states, numerous issues impacting telephone customers are commanding the attention of regulatory bodies and consumer advocates. During the current period, the Public Counsel has continued to pursue telephone-related dockets, to monitor proceedings and participate in workshops on issues of quality of service, violation of service standards, quality of service rules, the practices of cramming and slamming, late payment charges, area code use and number conservation measures, and area code relief.

The Public Counsel continues to monitor the telephone service equality closely. The Public Counsel has pursued dockets with BellSouth, Verizon and Sprint regarding violations of Florida Public Service Commission (FPSC) rules during the past several years. The violations were considered by the Public Counsel to be repeated and willful. The Verizon case was settled in late 2001. Agreements have been reached with Sprint and BellSouth that resulted in automatic payments to customers for missed repairs and installations, thus providing a financial benefit to customers who have been subject to poor service performance on behalf of their telephone company. The agreements also provided for the establishment of \$500,000 in funding that will be used for the promotion of Lifeline service within the Sprint and BellSouth operating territories.

The Public Counsel was actively involved in a challenge to certain price cap rate increases that were implemented in 1999 by BellSouth for late payment charges. The FPSC agreed with the Public Counsel's position that the company had charged over

\$25 million annually for late payment fees in violation of price cap rules. The FPSC then ordered approximately \$50 million in refunds to customers. The company appealed this decision to the Florida Supreme Court. When the Court upheld the PSC decision, BellSouth was required to refund \$89,279,416 in early 2003.

In June, 2001, the Public Counsel filed a request with the FPSC to establish a rule-making docket to consider the need for rules that would require telecommunications companies to provide advance notice to consumers prior to the implementation of price increases. Following workshops and a hearing on January 21, the Commission approved a rule requiring interexchange companies to provide advance notice to customers of price increases.

As a standing staff member of the Federal-State Joint Board for Universal Service, the Public Counsel assisted in the development of recommendations for the Federal Communications Commissions actions regarding universal service throughout the year. The Joint Board provides recommendations to the FCC in fulfilling its duties to allocate and disburse over \$5.5 billion in annual universal service funding that is designed to ensure that basic local telephone service is affordable.

The Public Counsel participates with the National Association of Safety Utility Consumer Advocates (NASUCA) and the National Association of Regulated Utility Commissions (NARUC). NARUC also advocated adoption of rules to provide advance notice to consumers of price increases. NASUCA has been active in promoting rules that would favor future competitive entry.

**BELLSOUTH RATE CASE
DOCKET 920260-TL**

In 1992, the FPSC voted to investigate the earnings of BellSouth, thus launching the largest and longest public utility rate case in the history of the state. Almost 10 years later, and after recovering over \$2 billion in customer benefits, the Public counsel and BellSouth agreed to a final refund to customers of \$47.9 million that was included as a credit to customer bills in early 2001. The docket was formally closed on September 10, 2001.

The high points of this docket occurred in December 1994, when the Public Counsel and BellSouth reached an agreement to settle the docket in exchange for rate reductions to be implemented over a three year period, amounting to \$305 million, and adoption of an earnings sharing provision that covered 1994 through 1997 earnings.

The second highlight came when the Florida Telecommunications Act of 1995 was passed by the Legislature, and the Public Counsel was able to retain the customer benefits obtained in the BellSouth agreement, while other LECs in Florida were able to freeze their rates at existing levels. In addition to the rate reductions implemented by BellSouth, consumers received over \$300 million in refunds due to the earnings sharing provisions of the agreement.

**SHOW CAUSE PROCEEDING
AGAINST BELLSOUTH
REGARDING VIOLATION OF FPSC
SERVICE QUALITY RULES
DOCKET 991378-TL**

On September 10, 1999, the FPSC Staff opened Docket 991378-TL to require

BellSouth to show cause why it should not be fined for violation of FPSC service quality rules. The Public Counsel intervened in the case on September 17, 1999.

On September 17, 1999, BellSouth submitted a settlement offer to resolve the show cause proceedings. After extended negotiations, BellSouth and the Public Counsel reached a settlement agreement on July 9, 2001 that provides for new consumer benefits, in addition to the \$125,000 previously paid by the company:

1. Payment of an automatic \$25.00 credit to customers whose installation of new service is beyond three days, or beyond the date requested by the customer, whichever is greater.
2. Payment of an automatic minimum \$10.00 credit when a customer's service is interrupted for more than 24 hours. In the alternative, the credit will be calculated as \$4.00, plus three times the customer's daily recurring local service charges--up to a maximum of \$35.00, if this amount is greater than the \$10.00 minimum.
3. Contribute \$400,000 to a Community Service Fund over a two year period for the purpose of promoting Lifeline services.
4. Modify the company's tariffs to expand Lifeline eligibility to include those customers who are at or below 125 percent of the federal poverty income guidelines. The agreement allows the FPSC, the Public Counsel, non-profit organizations or other government entities to certify eligibility of the applicants.

The BellSouth agreement reached by the Public Counsel covers 2002 and 2003. The agreement has been extended for an additional year, until the end of 2004, because of BellSouth service violations that occurred in 2000. BellSouth customer rebates for delayed installation and repair is currently running over \$3 million per year, based on the terms of the settlement.

Public Counsel's agreement with BellSouth regarding expansion of Lifeline became the model for Legislative action in 2003 that extended the same program to all local exchange companies in Florida

**SHOW CAUSE PROCEEDING
AGAINST SPRINT
REGARDING VIOLATION OF FPSC
SERVICE RULES
DOCKET 991377-TL**

On September 10, 1999, FPSC Staff established a docket to require Sprint to demonstrate why the company should not be fined for violation of FPSC service quality rules. Public Counsel intervened in the docket and it was subsequently set for hearings by the FPSC.

On June 27, 2000, the Public Counsel and Sprint reached an agreement to settle the docket. Sprint agreed to establish a community service fund in the amount of \$100,000 that would be used to promote expanded participation in the Lifeline program in Sprint operating territory. In addition, Sprint agreed to make future contributions to the fund for a minimum of two years based on the company's performance in answer time for calls to the Business Office and Repair Service. Contributions to the fund could reach as high as \$200,000 per month based on the company's performance.

Sprint also agreed to initiate a Service Guarantee Plan for a minimum of two years that would include automatic credits to customers for failure to comply with FPSC rules that apply to speed of installation and repair. Repair credits range from a minimum of \$10 up to 200% of the customer's recurring local service charge for failure to restore service within 24 hours. Likewise, an automatic credit of \$20 would be given to customers whose new service was not installed within three days. This credit could be increased up to \$100 if the service is not installed within 30 days. After the stipulation was filed, the company agreed also to make a \$75,000 contribution to the State of Florida general fund. The stipulation was approved by the FPSC on December 20, 2000 and it was implemented on June 1, 2001.

The Sprint agreement was unique in that it included automatic credits to customers for service failures by the company, a remedy that is not available to the FPSC under the current statutes. It was the first such agreement implemented in Florida, and one of the first in the nation. Since the plan was implemented in June 2001, Sprint has processed \$3,614,720 in repair and installation rebates in addition, the company has added an additional \$35,000 to the Lifeline promotion fund due to answer time performance.

**BELLSOUTH LATE PAYMENT
CHARGE
DOCKET 000733-TL**

For approximately 13 years BellSouth has charged a late payment fee calculated as 1.5% per month of a customer's unpaid balance in excess of \$1.00.

On July 13, 1999, BellSouth filed two tariffs revamping this fee. First, BellSouth changed its late payment fee to a fixed amount of \$1.50 for residential customers and \$9.00 for business customers. Second, BellSouth created what it claimed was a new fee, entitled "interest fee," calculated as 1.5% per month of a customer's unpaid balance in excess of \$6.00. Together, these two fees amounted to a revenue increase of about \$25 million per year.

The Public Counsel intervened and argued that the two tariffs should be considered together as a \$25 million per year increase to BellSouth's late payment fee. An increase of this magnitude far exceeded the allowable increase for the non-basic service category to which late payment fees belong.

The FPSC issued a proposed agency action order agreeing that the increase exceeded the amount allowed by the price cap statute. BellSouth protested the order. Both BellSouth and the Public Counsel submitted briefs to the FPSC. On August 30, 2001, the FPSC issued an order again agreeing that the two tariffs considered together violated the price cap statute. The FPSC ordered BellSouth to stop charging the interest fee and to refund all money collected by the fee since it was implemented -- a period of about two years. The order therefore required BellSouth to refund approximately \$50 million. BellSouth's appeal to the Florida Supreme Court was denied in January 2003 and BellSouth customers received \$89,279,416 in refunds in early 2003.

ELECTRIC AND GAS UTILITIES

Two major electric rate cases were recently concluded. Florida Power & Light

Company's case was resolved by a negotiated settlement between the company and the Office of the Public Counsel which required the company to reduce its base rates by an additional \$250 million per year beginning April 15, 2002. This reduction was implemented immediately after the expiration of an earlier, three-year settlement from 1999 which required the company to reduce its rates by \$350 million annually. FPL's base rates are now \$600 million per year less than they were in early 1999. The new stipulation also continues a revenue sharing plan from the 1999 stipulation under which FPL will have refunded approximately \$212 million through June 2002 in addition to the rate reductions. Further refunds can be expected under the new agreement in succeeding years.

A negotiated settlement also resolved the Florida Power Corporation rate case just before hearings were to begin. FPC agreed to reduce its base rates by \$125 million, or 9.25%, per year and to refund revenues which exceed specified target levels in future years.

The office has also been actively involved in the Governor's Energy 2020 Study Commission on which the Public Counsel, Jack Shreve, served as an ex officio member. The office also intervened and has taken an active role in the GridFlorida proceedings in which the PSC is considering the participation of Florida's investor-owned electric utilities in a regional transmission organization (RTO) in response to the Federal Energy Regulatory Commission's (FERC's) Order No. 2000.

The office continues to participate in the annual cost recovery dockets and intervenes in specific electric and gas utility matters as necessary to represent the

customers' interests. Routine activities include monitoring industry activities throughout the country, assistance for individual electric and gas utility customers, and frequent interaction with the press and investment companies.

**FUEL ADJUSTMENT DOCKETS
DOCKET NOS. 010001-EI, 010002-EG,
010003-GU, AND 010007-EI**

The Public Counsel participated in several issues in the 2001 fuel adjustment dockets. By law electric utilities are allowed to pass all fuel purchases directly to the consumers by means of an automatic pass-through. This pass-through and subsequent true-up is accomplished with an annual hearing process in which the FPSC entertains issues raised and positions taken by various parties to the proceeding. In the 2002 fuel hearings, the Office of Public Counsel and other certain consumer groups again argues that recovery of increased security costs were more appropriately recovered through base rates as opposed to the fuel clause. The FPSC rejected these arguments and allowed each investor-owned utility that sought to recover security costs through the fuel clause, subject to audit.

The OPC continues to monitor the cost and delivered price of the fuel to be certain that consumers pay no more than necessary to operate the various power plants. The rising cost of natural gas continues to be a concern.

**GRIDFLORIDA
DOCKETS NOS. 000824-EI, 001148-EI
and 010577-EI**

The Federal Energy Regulatory Commission (FERC), in December 1999, had issued its Order No. 2000. In this order

FERC concluded that its prior attempts to foster competition in the wholesale electric generation market had not gone far enough. In FERC's estimation, competition for electric generation would be hampered as long as traditional, vertically integrated electric utilities could favor their own generation resources by controlling access to their high-voltage transmission systems. FERC therefore directed electric utilities to work collaboratively to set up large Regional Transmission Organizations (RTOs). FERC envisioned large, multistate RTOs which would operate the transmission system for large regions of the country. These RTOs would be FERC-regulated interstate transmission companies which would have no incentive to favor one wholesale generator over another. Being somewhat unsure of its jurisdiction to directly order RTO formation, FERC encouraged utilities to voluntarily form RTOs under the threat that, if they did not, FERC would probably not approve mergers or allow market-based wholesale rates.

Florida's three largest investor-owned electric utilities, Florida Power & Light Company (FPL), Florida Power Corporation (FPC), and Tampa Electric Company (TECO), proposed to form an RTO to be known as GridFlorida covering peninsular Florida. (Gulf Power Company, which operates in the panhandle and is headquartered in Pensacola, would, with its parent the Southern Company and perhaps others, participate in another RTO.) FPL and TECO would transfer ownership of their transmission assets to GridFlorida while FPC would retain ownership but turn over operational control of its transmission system to the RTO. With minor modifications, FERC approved the GridFlorida RTO proposal which would create a "transco" which owned transmission assets and also acted as an

Independent System Operator (ISO) for assets it controlled but did not own.

The PSC initiated dockets for each of the participating electric utilities to consider, among other things, whether participation in an RTO was either voluntary or prudent. After hearings in October 2001, the PSC issued an order concluding that formation of an RTO was voluntary under FERC's Order No. 2000 and that the companies acted prudently in responding with the proposed formation of GridFlorida. The PSC disagreed, however, with the formation of GridFlorida as a transmission owning entity, i.e. a "transco." The PSC felt that it could better preserve its traditional jurisdiction over transmission assets used to provide retail electric service if GridFlorida operated as an ISO exercising only operational control over the state's transmission assets. The companies were therefore given ninety days to return to the PSC with a proposal to establish GridFlorida as an ISO. The compliance filing was made on March 21, 2002, and the PSC issued Order No. 02-119-PAA-EI on September 3, 2002.

The Public Counsel was and remains concerned about the transfer of regulatory oversight from a state to a federal agency which would result from PSC approval of Florida's electric utilities' participation in an RTO. FERC has exclusive jurisdiction over the transmission of electricity in interstate commerce, and there is no question but that GridFlorida, whether a transco or an ISO, would be a company transmitting electricity in interstate commerce subject to FERC's jurisdiction. As things now stand, however, the Florida PSC exercises exclusive jurisdiction over all facets of retail electric service, including the transmission component of traditional retail electric service. In the absence of explicit direction to the contrary, it must be presumed that the

Legislature contemplates the FPSC regulating all facets of retail electric service as it has always done. Since it appears that turning over operational control of retail transmission assets to GridFlorida would effect a transfer of regulatory control over those assets from the PSC to FERC, it is the Public Counsel's position that the PSC cannot give its approval because to do so would effectively divest the PSC of a portion of the statutory authority conferred upon it by the Legislature. The better course would be for the PSC to direct the electric utilities under its jurisdiction not to transfer operational control to GridFlorida and to continue providing retail electric service in the traditional manner contemplated by Florida Statutes.

In pursuing these concerns, the Public Counsel challenged a number of the findings of the PSC. First, the Public Counsel filed for reconsideration of two issues.

In addition to the issues before the PSC on reconsideration, the Public Counsel appealed numerous issues to the Florida Supreme Court, the most fundamental of which is that the Florida Legislature is the body solely responsible for defining the expanse of the PSC jurisdiction. By its order, however, the PSC was effectively ceding some of its legislatively-granted authority to the federally controlled FERC. The Public Counsel contended that the PSC action is illegal because only the Florida Legislature has the authority to re-define the PSC's jurisdiction.

In addition, the Public Counsel argued that Florida ratepayers were adversely affected by the PSC's order; that the PSC violated the Administrative Procedure Act in approving GridFlorida;

and the GridFlorida is inherently inconsistent with existing Florida law.

After taking oral argument, the Supreme Court deferred any appellate holding on the merits of the issues, ruling that the issues were not final agency action. Should the PSC reach final determination ratifying its proposed action on these issues, the Public Counsel will again bring these issues before the Supreme Court.

**FLORIDA POWER & LIGHT
COMPANY
DOCKET NO. 001148-EI**

The Office of the Public Counsel had initiated a rate case to reduce FPL's rates in January 1999. The case was resolved by a negotiated settlement, accepted by the PSC in March 1999, which required FPL to reduce its rates by \$350 million per year. The stipulation was the first to adopt a revenue-sharing approach in place of traditional rate-of-return regulation. For each twelve-month period during the three-year term of the agreement, revenue sharing ranges were established. If base rate revenues fell within the range, they were to be shared on a one-third/two-thirds basis, with the two-thirds being refunded to FPL's customers and the one-third being retained by the company. Revenues which exceeded the top of the revenue sharing range were refunded 100% to customers. The revenue-sharing arrangement provided an incentive for FPL to increase efficiencies while offering customers the potential for future refunds if electricity sales grew. The sharing provision required FPL to refund \$22.8 million for the first twelve-month period, \$105 million for the second, and for the third twelve-month period ending April 14, 2002, refunds are expected to be approximately \$84 million (for a total of approximately \$212 million in refunds in

addition to the \$350 million annual rate reduction).

In August 2000, the PSC established a docket (Docket No. 001148-EI) to consider FPL's proposed merger with Entergy Corporation (which was ultimately abandoned in April 2001), FPL's participation in the GridFlorida regional transmission organization, and the possible effects of these events on the company's retail rates. Later, in May 2001, the PSC ordered FPL to file the MFR's (minimum filing requirements) necessary for a full review of FPL's base rates. The schedule for this docket would allow the PSC to reach a final decision after hearings in time for new rates to take effect on April 15, 2002, immediately after the expiration of the 1999 stipulation on April 14, 2002. After extensive discovery had taken place, the Public Counsel and FPL were able to negotiate another agreement which was accepted by other parties to the docket (with the exception of the South Florida Hospital and Health Care Association) and approved by the PSC in March 2002. This latest stipulation will be in effect until December 31, 2005. FPL will reduce its base rates by an additional \$250 million per year, which means that FPL's base rates from April 15, 2002, onward will be \$600 million less per year than they were at the beginning of 1999. Revenue-sharing ranges were established under the new stipulation for the remainder of 2002 and for calendar years 2003, 2004 and 2005. FPL also agreed to the early return of approximately \$200 million of fuel cost over-recoveries between April 15 and December 31, 2002. (These over-recoveries would normally have been flowed back to customers during 2003.)

South Florida Hospital and Health Care Association (SFHHA) had intervened and filed testimony in the docket. The Association argued that it's particular rate

class should receive \$545 million in lower rates than that allowed under the stipulation. As a result, the SFHHA is appealing the stipulation to the Florida Supreme Court.

The appeal puts the Public Counsel into an unusual situation. The Public Counsel cannot play favorites because it represents all customers, including the SFHHA. As a result, the Public Counsel negotiated the settlement based on FPL's total revenues, with the reductions to be applied in equal proportion to each of the rate classes.

The Public Counsel would be supportive if SFHHA could obtain a reduction that was greater than even the reduction derived from the general settlement, as long as it does not jeopardize the rest of the settlement. The problem, however, is that SFHHA's action does pose a grave jeopardy for all the rest of FPL's customers. The action could result in either (1) voiding the current agreement under which FPL's customers receive a \$600 million benefit; or (2) taking the share of some other customers class (residential, for example). Therefore, the Public Counsel is opposing the action by SFHHA. At this point, all briefs have been filed and the Supreme Court has set oral argument for November, 2003.

FLORIDA POWER CORPORATION DOCKET NO. 000824-EI

On July 7, 2000, the FPSC opened a proceeding to review the earnings of Florida Power Corporation (FPC) and to study the impact of the company's merger with Carolina Power & Light. In a September, 2001 filing, the company indicated that it expected to exactly earn what it claimed to be a reasonable return on its investment with its existing rates. Subsequent to the events

of September 11, 2001, the company claimed that because of lower than expected revenues and increased costs, it needed a rate increase of \$40 million just to earn a reasonable return. FPC also claimed it needed an additional \$49 million in December, 2003, to pay for the costs of putting its Hines II electric generating plant on line.

The Public Counsel filed detailed rebuttal testimony by six witnesses collectively showing that the company's existing rates were too high and that the company needed to improve the quality of the services it provides to customers.

On March 27, 2002, the Public Counsel and other parties entered into a settlement agreement with FPC to reduce company's base rates by \$125 million per year, or 9.25%. The FPSC approved the agreement at its agenda conference on April 23, 2001. The company also agreed to reduce 2002 fuel charges by \$50 million. In addition, the stipulation established an earnings sharing plan, similar to the FP&L agreements, that guarantees future refunds to customers if revenues exceed specified limits. A major issue in the FPC case was quality of service, and the company will be subject to future customer refunds up to \$6 million if service quality objectives are not achieved over the next four years. The Company committed to spend more than \$100 million to achieve a 20 percent improvement in system reliability.

The agreement appeared to resolve all rate issues for several years. In 2003, however, a major controversy developed over the application of the earnings sharing plan for the first year. FPC calculated a refund of \$5 million. The Public Counsel, on the other hand, calculated the refund to be \$23 million. The expansive difference

arose over the proper treatment for the rate reduction in calculating the amount subject to refund. The Public Counsel argues that the language of the stipulation was clear and unambiguous (the parole evidence rule), and directed a \$23 million refund. FPC argued that it should be allowed to present testimony explaining what it "meant" the stipulation to mean.

Attorney General Charlie Christ intervened and argued on the side of OPC and FPC's ratepayers. After oral argument, the FPSC agreed with the Public Counsel and the Attorney General, and required FPC to refund \$23 million to its ratepayers. In addition, the FPSC's decision sets the precedent for the resolution of some issue for each of the three remaining years that the stipulation will be in effect. The difference for each of the remaining three years could be as much as \$14 million per year. Accordingly, by prevailing on this issue, the Public Counsel and the Attorney General saved the ratepayers a potential total of \$60 million.

**GULF POWER COMPANY
DOCKET NO. 010949-EI**

On September 10, 2001, Gulf Power Company filed a petition for a permanent rate increase. Gulf requested an increase in its retail rates and charges designed to generate \$69,867,000 in additional gross annual revenues which would allow the Company to earn an overall rate of return of 8.64% or a 13% return on equity. This request was based upon a projected June 2002 through May 2003 test year and a 13-month average jurisdictional rate base of \$1.2 billion.

The most significant basis for the requested increase, according to Gulf, was the addition of Smith Unit 3, a 574

megawatt gas fired combined cycle generating unit along with the associated operation and maintenance expenses. Other significant factors include the addition since the last rate case of 100,000 new customers; 1,400 miles of new distribution lines; and 90 miles of new transmission lines; the replacement and repair of an aging electrical infrastructure; and the increased O&M costs associated with aging generating plants.

Customer service hearings were held in Pensacola and Panama City on January 16, 2002. The final hearing was held February 25-26, 2002.

Parties filed briefs and a special agenda was held on April 26, 2002. On June 10, 2002, the PSC issued Order No. PSC-02-0787-FOF-EI, which authorized a rate increase of \$53,240,000.

**ST. JOE NATURAL GAS
COMPANY, INC.
DOCKET NO. 001447-GU**

St. Joe Natural Gas Company serves approximately 3,409 customers in Mexico Beach, Port St. Joe and Wewahitchka, Florida. On December 15, 2000, the utility filed a petition to increase its rates, requesting that it proceed under the FPSC's proposed agency action procedures. The utility notified the FPSC of (and the FPSC approved) a projected test year of 2001, and a historical test year of 1999, for its interim increase request.

In 1997, St. Joe had restructured its rates on a revenue-neutral basis. In late 1998, St. Joe's largest customer, the Florida Coast Paper Company paper mill, went out of business and filed for bankruptcy. The paper mill had provided St. Joe with approximately 75% of its annual revenues. The utility had a tax liability of

approximately \$540,000 and asked the FPSC for approval to recover this liability as part of its requested annual increase of \$551,923. This tax liability was a consequence of the bankruptcy of the paper mill. In its final Order No. PSC-01-1274-PAA-GU, issued June 8, 2001, the FPSC disallowed the utility's recovery of its tax liability of approximately \$540,000. However, the FPSC instead treated the utility's deferred revenues of \$1,578,595, which are related to this tax liability, as cost-free Contributions in Aid of Construction (CIAC), in the utility's capital structure.

In its petition, St. Joe requested an annual increase of 106.72% in its rates for the average customer usage of 30 therms per month. This would increase the residential customers' average monthly rates from \$13.24 to \$27.37 (without fuel costs included). This rate increase would entail an increase in revenues of \$551,924, or 52% of its forecasted 2001 revenues. The company also requested an interim increase of \$459,185, based on the test year 1999. The FPSC granted an interim increase of \$355,984, pursuant to Order No. PSC-01-0465-PCO-GU, issued February 26, 2001, using a 10.00% return on equity (ROE). The utility's allowed current return on equity, established in Docket No. 931102-GU, on December 10, 1993, was 11%. It requested a new ROE of 11.5% and an equity ratio of 83.70%. The FPSC's final order in this case reduced the equity ratio to 60.00% but approved a new ROE of 11.5%.

The Public Counsel received the utility's minimum filing requirements (MFR's) and its witnesses' testimony. We analyzed the MFR's, which provide data pertaining to the utility's cost of service, its financial data, such as balance sheets, income statements and capital structure, and its engineering data, such as customer

service interruptions, meter testing and vehicle usage. The Public Counsel very closely monitored this rate case, analyzing all of St. Joe's filings as they came to the FPSC, to determine whether we could benefit the customers of St. Joe Natural Gas Company by intervening on their behalf. The decision was made to refrain from intervening in order to hold down the costs of rate case expense to the customers. The FPSC's final order, summarized below, demonstrated that this was best for the utility's customers.

Final Order No. PSC-01-1274-PAA-GU, issued by the FPSC on June 8, 2001, granted the utility an increase in revenues of \$327,149, or 29% of the company's FPSC adjusted revenues. This compared to the company's requested increase of \$551,924. With an average customer usage of 30 therms per month the average monthly bill increased from \$13.24 to \$20.43 (without fuel costs included). The company had requested an increase from \$13.24 to \$27.37.

CITY GAS COMPANY OF FLORIDA DOCKET NO. 000768-GU

In the year 2000, City Gas Company of Florida had over 100,000 natural gas customers located in Brevard, Broward, Dade, Indian River, Martin and St. Lucie Counties, Florida. City Gas filed a petition for a rate increase on August 25, 2000. Its last prior general rate increase was approved by the FPSC on November 20, 1996. City Gas contended that it had experienced an increase in its expenses without a corresponding increase in revenues, and that its rate base had increased from \$92 million in 1997, to \$114 million in its projected test year ending September 30, 2001. City Gas asserted that this rate base increase would be brought about primarily due to a major

distribution system expansion during its test year.

The Public Counsel began monitoring this rate case to ensure that City Gas did not receive an inappropriate rate increase at the expense of its customers. The Public Counsel attended numerous meetings between the utility and FPSC staff. We also reviewed the filings of the utility, including the testimony of the company's witnesses, and its minimum filing requirements (MFR's). The MFR's provide data pertaining to: 1) Cost of service, such as tariff sheets, customer bills, gas sales and revenues by rate class; 2) Financial data, such as balance sheets, income statements and capital structure; and 3) Engineering data, such as customer service interruptions, meter testing and vehicle usage. After thoroughly reviewing the data available, as well as the information provided at the meetings, the Public Counsel determined that continued monitoring, rather than intervening in this case, would best serve the customers' interests.

In its Order No. 002101-PCO-GU, issued November 6, 2000, the FPSC granted City Gas a 5.77% interim temporary increase in residential rates of 94 cents, based on the average customer usage of 20 therms per month. In its Final Order No. PSC-01-0316-PAA-GU, issued February 5, 2001, the FPSC granted City Gas a final increase in revenues of \$5,132,356. This increased final residential rates from \$16.27 to \$17.37, or 6.78% per month at the average customer usage of 20 therms. The above-indicated rate increase does not include fuel adjustment costs. The FPSC allows fuel cost increases to the utilities to be directly passed through to the utilities' customers. City Gas' fuel costs as of February 5, 2001, the date of the final order,

were being charged to the customers at the rate of 79.093 cents per therm.

WATER AND WASTEWATER UTILITIES

The Public Counsel also represents consumers in cases involving water and wastewater utilities. The regulatory framework for this industry is contained in Chapter 367, Florida Statutes. Privately owned water and wastewater companies are regulated either by the County in which they operate, or by the FPSC in those counties that choose not to exercise regulatory authority. Currently 37 counties regulate the privately owned water and wastewater utilities that operate within their borders, while the remainders have chosen to have the PSC regulate the water and wastewater companies.

From 1974 through 1999, the Public Counsel represented consumer interests only in those water and wastewater cases within the jurisdiction of the PSC. In 1999, however, the legislature expanded the Public Counsel's responsibility to include water and wastewater cases under county rule, as well as those regulated by the PSC. The first county regulated case in which the Public Counsel appeared on behalf of utility customers was Intercoastal Utilities, Inc. That case is described in detail in the case-by-case descriptions which follow this introduction.

It is the experience of the Public Counsel that customers are often far more concerned about and involved in water and wastewater cases than either electric or telephone cases. While the aggregate dollar effect of a water and wastewater case is far smaller than the much larger electric or telephone rate cases, the per customer effect is often on the same order of magnitude. In

addition, the greater tangibility of the product and the local management that often characterizes these small utilities tends to generate a greater emotional response from customers.

As a result, the Office of the Public Counsel devotes a great deal of its energy and resource to water and wastewater cases, in spite of their smaller aggregate dollar impact.

**ALOHA UTILITIES, INC.
SEVEN SPRINGS DIVISION
DOCKET NOS. 960545-WS,
010156-WS & 020896-WS**

This investigative docket has become known as the “black water” case and was initiated by Mr. James Goldberg, President of the Wyndtree Master Community Association. The customers of this association requested that the FPSC investigate the utility’s rates and water quality. The Public Counsel sponsored customer testimony at the hearing held September 9, 1996. The customers complained of black water, low pressure, odor, and customer related problems. Aloha Utilities presented witnesses that claimed the black water flowing from the customer’s water taps is a result of the interaction of copper pipes and hydrogen sulfide present in the water. While no party to this docket disagreed that hydrogen sulfide was most likely the cause of the poor quality of water, there was much disagreement on the possible solutions to correct the problem and the costs of those solutions. The utility presented proposals ranging from constructing new aeration towers at a cost of \$10 million to repiping individual customers’ homes with hot rated plastic pipe. This converts to a 400% increase in the customers water bill for the new towers or alternatively to \$1,500 to \$5,000 per

customer for repiping. The Public Counsel presented an engineering witness who testified that comparatively less expensive pressure sand filters would accomplish the task. Unfortunately, the commissioners accepted the utility’s argument that expensive pretreatment equipment would have to be installed before the pressure filters would be effective. Representative Mike Fasano was successful in convincing the FPSC that service availability fees (impact fees) should be increased so that future customers would help offset the costs of correcting the black water problem. This action prevents current customers from bearing the entire burden of the cost.

The utility is currently conducting a pilot test project to determine the best treatment necessary to remove the hydrogen sulfide from the water delivered to customers’ homes. Much of the future water needs of Aloha Utilities will be met by purchasing treated water from Pasco County. Since mixing water treated by two different methods may cause conflicting results, the utility is taking a wait and see posture before proceeding with their pilot project. Pasco County is in the process of conducting their own pilot project to determine the compatibility of the MIEX process with the chloramination disinfection process. According to the utility’s engineer, Aloha is reluctant to spend money on disinfection equipment that may be made obsolete by the treated water delivered from the county. Because of the uncertainty of the type and costs of equipment that will be purchased, the utility has agreed to a six month extension of time to adjust its service availability fees.

On July 16, 2003 a large group of Aloha customers petitioned the FPSC for the right to obtain service from Pasco County Utilities unless Aloha solved its water

quality problems by a certain date. If Aloha could not supply acceptable water, the customers sought to secede from Aloha's service territory by amending its certificate of authorization.

The PSC established Docket No. 020896 to entertain these customers' concerns. Because of Aloha's appeal of the rate order, however, the commission has not actively pursued the issues in this docket. In that appeal, Aloha challenged the PSC's authority to impose the service standards specified in the rate order. Since these standards also related to the customers' petition, the Commission considered the entire matter to be within the jurisdiction of the First District Court throughout the duration of the appeal. With that appeal now over, the Commission will activate this docket.

**ALOHA UTILITIES, SEVEN SPRINGS
WATER DIVISION
DOCKET NO. 010503-WU**

Aloha Utilities, Inc. (Aloha or utility), is a Class A water and wastewater utility in Pasco County. The utility consists of two distinct service areas, Aloha Gardens and Seven Springs. The utility's service area is located within the Northern Tampa Bay Water Use Caution Area as designated by the Southwest Florida Water Management District (SWFWMD). Critical water supply concerns have been identified by SWFWMD within this area.

On August 10, 2001, Aloha filed an application for an increase in rates for its Seven Springs water system.

The utility's requested test year for setting final rates is the projected year ended December 31, 2001. In its minimum filing requirements (MFRs), the utility requested

total water revenues of \$3,044,811. This represents a revenue increase of \$1,077,337 (or 54.76%).

On August 24, 2001, the Office of the Public Counsel filed its Notice of Intervention. Also intervening in the case were Representative Mike Fasano, Edward Wood (a customer), and the Southwest Florida Water Management District.

A hearing in Pasco County was held January 9 through 11, 2002.

Aloha still has the ongoing problem with "blackwater" or water resulting from the reaction of hydrogen sulfide with copper pipes. Several customers testified on this issue and the Public Counsel argued at the hearing and in testimony that the utility's request for rate increases should be denied until the problem is corrected. Also, The utility has been sighted by SWFWMD for pumping water from its wells in excess of its allowed permitted capacity. The utility's alternative is to purchase water from Pasco County. The price per thousand gallons to purchase from Pasco County is currently \$2.34 per thousand compared to \$.10 per thousand to produce raw water from the utility's own wells. Because of this expensive alternative, the Public Counsel presented two expert witnesses to dispute the utility's estimate of how much water will be needed from Pasco County.

At its agenda meeting held on April 2, 2002, the commission voted against any increase in the utility's revenue. The commission's primary reason for doing so is because of the on-going poor quality of water and the poor treatment that the customers received in response to complaints. To reflect the poor management of the utility, the commission went so far as to reduce the allowance for salaries of both

the president and vice president by 50%. Further, the commission ordered that the utility make improvements to all of its wells by December 2003 to eliminate at least 98% of the hydrogen sulfide in raw water. Once the final order is issued, the utility will have 90 days to submit a plan to the commission showing how it intends to comply with the commission's ordered improvements.

The largest expense requested by the utility was to purchase water from Pasco County. The commission rejected the utility's arguments that purchasing water from Pasco County was their only alternative. The commission is requiring the utility to perform a cost benefit analysis of an appropriate alternative water supply that allows it to fit permanently into the long-term alternative water supply plan in a manner that is not detrimental to the environment, or to Aloha's ratepayers.

Also of particular interest is the commission's decision to reduce the utility's requested rate case expense by 50% for duplication that could have been avoided had the utility filed this water case at the same time that it filed its wastewater case (re: Docket No.991643-SU).

The Public Service Commission upheld most of the Public Counsel's positions and granted no increase to the utility even though the utility had requested an increase of \$1,077,337, or 55%.

On May 29, 2002, Aloha appealed the Commission's order to the First District Court of Appeal. In its appeal, Aloha raised numerous issues challenging the validity of the commission's findings. The Public Counsel and the PSC staff each independently filed briefs defending the PSC Order. On May 7, 2003, the First District Court rejected all aspects of Aloha's

appeal, and upheld the Commission's Order. Aloha moved for reconsideration, but this was also rejected by the Court.

Following the mandate from the Court, Aloha filed a request with the FPSC for an amendment to three requirements to the Order: (1) the 98% hydrogen sulfide removal requirement; (2) the deadline for improvements at wells 8 and 9; and (3) the upgrade plans on wells 1 through 7. The Public Counsel is preparing a response to Aloha's motion and is actively participating in the implementation of the Commission's Order.

**GAIN ON SALE OF ORANGE
COUNTY FACILITIES
BY FLORIDA WATER SERVICES
CORPORATION
TO ORANGE COUNTY
DOCKET NO. 980744-WS**

On December 30, 1997, Florida Water Services Corporation (FWSC) filed an application to transfer its Orange County water and wastewater facilities to Orange County. The sale resulted in a net gain (profit) of \$4.5 million. The FPSC opened this docket to consider the disposition of this gain. On June 29, 1998, the Public Counsel intervened in this docket to represent FWSC's customers' interests.

The historical rate base treatment should have a significant bearing on the outcome of the case. While the plant was in rate base, the customers paid the entire debt and equity components of the capital supplied for the plant. Accordingly, the full cost of any risk associated with the past ownership is borne by the customers. The Public Counsel takes the position that because the customers have borne the risk, they are the proper recipients of any appreciation during that period. The Public

Counsel has been actively participating in the discovery phase of this docket to develop its position that the gain should flow to the ratepayers since the ratepayers have borne the risks associated with the plant investment. The Public Counsel has filed the expert testimony of Kimberly Diskmukes, a former Public Counsel financial analyst, to argue that the customers are entitled to share in the \$4.5 million gain. The Company has filed the testimony of four accounting expert witnesses who argue that the utility is entitled to keep the entire \$4.5 million windfall. The Company has requested and has received several extensions in this case. The hearing date has now been rescheduled to February 24, 2004.

**LINDRICK SERVICE CORPORATION
DOCKET NO. 980242-SU**

This case began as a proposed agency action that was protested by both the utility and the Public Counsel. As major issues, the Public Counsel protested that: the quality of service was below the standards required by Section 367.111, Florida Statutes; the utility chose an engineering solution that was not the most efficacious engineering alternative to solve the service problem; the engineering cost estimates for interconnection components were overstated; major components were sized excessively for the existing customer base; the rate base should be offset by salvage proceeds anticipated from dismantling existing plant; test year CIAC was understated; working capital was overstated because of erroneous accounting treatment of certain O&M expenses; depreciation expense was excessive because of overstatements in the rate base; purchased treatment expense was excessive due to imprudent engineering choices; accounting, administrative and engineering contractual service expenses should have reflected a

greater reduction from a plant closing; excessive test year inflow and infiltration estimates overstated chemical and electric expenses; test year wages, salaries, pensions, and benefits and payroll taxes were overstated; testing expenses were overstated because of unusually high DEP activity in the base year; the capital cost rate allowed for advances from affiliates were excessive; and the utility's plant in services historically had not been maintained properly, so remedial costs should be adjusted accordingly. The Public Counsel began undertaking discovery and preparing testimony and examination to prove each of its assertions to the PSC.

While the parties prepared to go to hearing, several extended negotiations took place. As a result, a settlement was reached wherein the utility agreed to freeze its rates at the current level for 3 years (with the exception of automatic indexing and pass throughs), and to refund up to \$682,000 to its customers in the event of a sale of its system to a public purchaser. The settlement prevents Lindrick from filing for a general rate increase until September 2003.

**INTERCOASTAL UTILITIES, INC.
DOCKET NO. 2001-0007-0023**

Chapter 350.0611, Florida Statutes, grants to the Office of the Public Counsel, the authority to provide legal representation for the people of the State in proceedings before counties pursuant to Chapter 367.171(8), Florida Statutes. In St. Johns County, Intercoastal Utilities, Inc. (Intercoastal, Utility or Company) filed for a rate increase with the St. Johns County Water and Sewer Authority (Authority). The Authority issued an order on November 6, 2000, establishing a projected test year ending December 31, 2001, with the base

test year being the year ending December 31, 2000. In this same order, Intercoastal was ordered to file the minimum filing requirements for the rate increase request no later than May 1, 2001.

The St. Johns County Board of County Commissioners (Board) adopted an order on January 25, 2000 directing the Authority and its Staff to initiate an investigation of Intercoastal. Staff's report on the investigation indicated that Intercoastal may be overearning above its last authorized rate of return. The Authority issued an order on May 3, 2001, opening a formal overearnings investigation of Intercoastal's utility operations. The Authority established Docket No. 2001-0007-0023 to investigate possible overearnings of Intercoastal. On May 25, 2001, the Office of Public Counsel (Public Counsel or OPC) filed its Petition to Intervene in the Docket and on May 29, 2001 the Public Counsel filed a Motion to Hold Revenue Subject to Refund, pending the outcome of the investigation. On June 6, 2001 the Authority issued an order acknowledging the OPC's intervention in the investigation docket. On the same day the Authority issued an order holding \$144,235 of water revenues and \$250,751 of sewer revenues subject to refund on an annual basis.

As a result of Intercoastal's refusal to respond to discovery requests in this Docket, the Authority issued an order imposing substantial fines, increasing daily, until such time as Intercoastal provided the requested information. In response to this order Intercoastal filed a number of motions with the Authority including Motions to Abate Dockets and Abate Fine. OPC filed responses in opposition to the Utility's Motions to Abate Dockets and Abate Fine. Prior to the hearing on these motions the parties entered into a Settlement Agreement

that required Intercoastal to provide the requested information and imposed a fine of \$15,000 for Intercoastal's continued refusal to provide the requested information. The Authority issued an order on July 24, 2001 approving the Settlement Agreement.

On July 11, 2001, Intercoastal formally withdrew its request for a rate increase. With the withdrawal of the rate increase request by Intercoastal, only the overearnings docket remained to be resolved. The minimum filing requirements filed by the Utility for the historic year 2000 served as the base year for the overearnings investigation. Both Staff and Public Counsel propounded interrogatories and requests for production of documents from Intercoastal. However, Intercoastal again began refusing to answer questions or provide information concerning JAX Utilities Management (JUM), which is contractually obligated to provide all of the employees of Intercoastal and otherwise completely operate the Utility, while having some common ownership and boards of directors and sharing officers.

Intercoastal and JUM have common officers, directors and ownership. It was the contention of Public Counsel and Staff that Intercoastal and JUM were "related or affiliated parties," which required their transactions to be carefully scrutinized to avoid utility operations from subsidizing nonutility operations. Throughout the proceeding Intercoastal steadfastly refused to respond to legitimate requests to discover information about JUM and to respond to orders of the Authority to enforce those requests. Public Counsel and Staff argued that Intercoastal needed to provide detailed documentation to support its investment in utility plant, especially the approximately 2.5 million dollars purportedly invested in water plant additions. Intercoastal claimed

that JUM had sole possession of the required information and that it refused to provide it to Intercoastal or anyone else.

The Final Order confirming the Hearing Officer's Recommended Order with modifications was issued on January 29, 2003. As a direct result of Intercoastal's refusal to supply information about JUM's operations, the Final Order disallowed all of the Utility's purported 2.5 million dollar investment in water plant additions to be included in rate base. In its January 29, 2003 Final Order the St Johns County Board of County Commissioners (Board) determined that Intercoastal was overearning by \$334,727 annually. The Board determined that Intercoastal's annual revenue requirement for water operations should be reduced by \$162,786 and the annual revenue requirement for wastewater operations should be reduced by \$171,941. These annual amounts result in a 15.04% reduction in water rates and a 7.95% reduction in wastewater rates on a going forward basis. This determination of overearnings also resulted in a requirement of Intercoastal to refund \$527,789, with interest to its customers. In addition to reducing rates and requiring a substantial refund, the Final Order of the Board also ordered Intercoastal to pay a fine of \$330,000. to the Authority because of its continued failure to provide support for its MFR schedules in direct violation of Authority and Board orders.

The provisions of the Final Order were very adverse to the positions taken by the Utility in this docket. For this reason Intercoastal promised to appeal the Order. However, prior to the deadline for filing an appeal, Intercoastal entered into a Settlement Agreement with Staff and OPC that prohibited Intercoastal from appealing the Final Order. In consideration for agreeing

not to appeal the Order the fine was reduced to \$140,000, which had to be paid within 30 days of the Boards' approval of the Settlement Agreement. The Agreement also extended by 90 days the time Intercoastal was given to make the customer refunds with interest. The Agreement prohibited Intercoastal from filing a new rate case until after June 1, 2003. The Agreement also required that all costs and attorney's fees incurred by the parties in relation to any of the actions recited in the Settlement Agreement shall be borne by the party incurring them, with none of said costs or attorney's fees being passed on to Intercoastal's customers.

On March 4, 2003, the Board approved the Settlement Agreement. The docket remains open only for the purposes of verifying the reduction in rates, payment of the penalty to the Authority, and payment of the refunds to the customers.

HUDSON UTILITIES, INC. DOCKET NO. 981079-SU

Hudson Utilities, Inc. ("Hudson" or "Utility") is a Class B utility serving approximately 2,300 residential and 115 commercial customers. The Utility provides wastewater collection service to its customers and contracts with Pasco County (County) for wastewater treatment service pursuant to a Bulk Wastewater Treatment Agreement (Agreement).

On August 26, 1998, Hudson filed an application for amendment of Certificate No. 104-S to extend its service area. The application included a request to serve a portion of territory, known as Signal Cove that was being partially served by Pasco County ("County"). Signal Cove is adjacent to the southern boundary of a portion of territory served by Hudson. The community

includes 382 existing buildings, 131 of which are currently receiving wastewater service from the County. The remaining buildings in the community use septic tanks. Signal Cove is located in an area which has been federally designated as a flood plain area unsuitable for the efficient use of septic tanks and drain fields. The comprehensive land use plan adopted by the County calls for coastal areas including Signal Cove, to be provided with sanitary sewer collection systems. However, the County generally does not construct gravity sewer collection systems. Thus pursuant to an Addendum to the Agreement included in the application, the County and Hudson agreed that the Signal Cove territory would be transferred from the County to Hudson.

To serve Signal Cove, Hudson must construct an additional collection system, lift station, and force main, and rebuild the existing lift station and force main. Pursuant to the Agreement, the transfer of the Signal Cove territory will close when Hudson connects its force main to the County's wastewater collection system, currently serving the 131 Signal Cove customers. In its application Hudson represented to the Commission that it had the financial and technical ability to provide wastewater collection service to the additional territory. Hudson also claimed that the proposed extension was not expected to impact its monthly rates or service availability charges. By Order No. PSC-99-1916-PAA-SU, issued September 27, 1999, which was made final and effective by Order No. PSC-99-2082-CO-SU, issued on October 21, 1999, the Commission approved Hudson's application to amend its certificate, including the transfer of the Signal Cove territory from the County to Hudson. Pursuant to Order PSC-99-1916-PAA-SU, Hudson was ordered to file proof of the transfer of the Signal Cove territory from the

County to Hudson within three months from the issuance date of the order.

Since October 21, 1999, until June 12, 2003, Hudson has filed and the Commission has granted four separate extensions of time to provide service to the expanded territory, including Signal Cove. While the Utility promised to provide service within a few months, they have failed to do so after more than 3 1/2 years. Hudson's failure to provide service to the expanded territory, particularly to Signal Cove, has caused a severe hardship to the people living in these areas. Because of the high water table, septic tanks have regularly failed to perform, causing severe health problems and considerable cost to the residence of these areas. Despite repeated promises, Hudson year after year failed to even secure the financing necessary to construct the facilities to provide this vital wastewater collection service.

After granting Hudson's fourth request for extension of time and granting an increase in the Utility's service availability fee from \$1,000 to \$2,400 per single family connection, the Commission in Order No. PSC-02-1626-PAA-SU expressly provided that: "...the utility shall file, in Docket No. 981079-SU, proof of the transfer of territory from the County to Hudson by June 30, 2003. Failure to meet the June 30, 2003, deadline shall result in the immediate initiation of show cause proceedings."

With the June 30, 2003 deadline fast approaching and with no construction even begun, Hudson filed its Fifth Motion for Extension of Time. In its motion it informed the Commission that it had secured a commitment letter from lenders to finance the needed construction to serve Signal Cove and other areas in the expanded territory. The commitment letter was

conditioned upon the Commission granting Hudson an additional eight month extension with further extensions as needed to “accommodate unavoidable construction delays”.

On June 25, 2003, the Office of Public Counsel (“OPC or” Citizens”) filed a response in opposition to Hudson’s Fifth Motion for Extension of Time. Given the highly qualified nature of many of the provisions of the commitment letter, the past conduct of the Utility and the potentially endless delays that could result from “unavoidable” circumstances, OPC argued that the Commission should not grant Hudson’s Fifth Motion for Extension of Time. OPC argued that the Commission’s Order No. PSC-02-1626-PAA-SU required it to initiate a show cause proceeding as soon as the Utility failed to provide service by June 30, 2003. The Citizens argued that in the show cause proceeding, the Commission could discover why Hudson had repeatedly failed to provide service. It could also investigate a number of suspicious affiliated party transactions relative to the proposed financing, as well as consider alternatives for providing service.

The Commission at its July 15, 2003 Agenda Conference considered Hudson’s motion and OPC’s response in opposition to the motion. At the Agenda Conference OPC argued that the Commission should at minimum provide Hudson with a significant negative incentive to provide the service within no more than eight months from the date of any order granting the extension. OPC argued that failure to provide service within this eight month period should result in immediate initiation of a show cause proceeding why Hudson should not be fined up to \$75,000 for continuing to fail to provide service. OPC also argued that the Utility’s request

for additional extensions beyond the eight months to “accommodate unavoidable construction delays” was too vague and could easily provide cover for Hudson’s continued failure to provide the critically need facilities.

At the conclusion of the July 15, 2003 Agenda Conference the Commission granted Hudson’s request for an additional eight months, but agreed with OPC to immediately initiate a show cause proceeding with a potential \$75,000 fine to be imposed upon Hudson if it failed to complete the Signal Cove construction within the eight month period. The Commission also rejected Hudson’s request to grant additional extensions to accommodate unavoidable circumstances. The Commission adopted a more stringent standard for granting any further extensions. Extensions beyond the eight months will be granted only because of “force majeure”, events or effects that can be neither anticipated nor controlled, including acts of nature (e.g. floods and hurricanes) and acts of people (e.g. riots, strikes and wars).

This docket shall remain open to verify Hudson’s performance of the Commission’s requirements. OPC intends to continue to monitor Hudson’s conduct and to file additional pleadings as necessary to assure Hudson’s service of not only the Signal Cove area but the Sea Pines and other areas in the expanded territory.

**SUNSHINE UTILITIES OF CENTRAL
FLORIDA, INC.
DOCKET NO. 992015-WS**

Sunshine Utilities of Central Florida, Inc. (Sunshine or Utility) is a class B utility which provides water service to approximately 2,871 water customers in 21 separate small systems around the Ocala

area in Marion County. All of these systems are under a uniform rate structure. Wastewater service is provided by septic tanks.

On December 21, 1999, Sunshine filed an application for a limited proceeding pursuant to Section 367.0822, Florida Statutes, to increase water rates and charges for all of its customers in Marion County. The rate increase requested was intended to be used to initiate a water facilities plan, in which the Utility would interconnect and consolidate five of the 21 separate systems owned by Sunshine. These five systems are known as Lake Weir, Lakeview Hills, Oklawaha, Belleview Oaks, and Hilltop. The Utility proposed to construct a centralized water treatment plant, pumping, and storage facility to serve the five systems specified in the Utility's comprehensive plan. Sunshine stated that it proposed the plan to resolve contamination problems faced by some customers and by a few non-customers near its service area. Further, the plan was designed to meet growth demands in the area of the interconnection. The Utility proposed an increase of 22.72% to all of its customers across the board.

After several meetings with the Commissions' Staff (Staff) in 1999 and 2000, it became apparent to the Utility that Staff did not support its original proposal since it would provide limited benefits to only five of the Utility's 21 systems. It was Staff's belief that the improvements did little to improve the quality of water or the service provided to the customers of the five affected systems and provided no benefits whatsoever to the other 16 systems. In its original filing, Sunshine requested that the rate increase be passed on to all of its customers, not only to the customers of the five systems involved. In light of Staff's

comments, Sunshine asked for and was allowed time to revise its proposal.

On September 8, 2000, Sunshine submitted an Amended Application (First Amended Application) in which it presented two alternatives. Under its first alternative, Sunshine submitted essentially the original proposal as discussed above, and still proposed a 22.19% rate increase for all of its customers. Under Alternative No. 2, Sunshine proposed a project of a more limited scope that would address only the contamination problems in Little Lake Weir and Lakeview Hills systems as well as the sulfur concerns in the Oklawaha area and the Hilltop systems. This alternative resulted in a proposed 18.2% increase to all customers.

After determining that the First Amended Application failed to adequately address Staff's concerns, Sunshine, on June 7, 2001, filed another amendment to its application (Second Amended Application). In its Second Amended Application, Sunshine proposed to consolidate the original five systems and included a facilities plan for all proposed system improvements and a used-and useful calculation which showed that not all of the new facilities would be 100% used and useful.

According to the Utility, the consolidation would eliminate the existing contamination problems and would improve the level of service that Sunshine can provide to its water customers. The consolidation was proposed to be funded by a combination of grants and low interest loans. The plan included a proposed 15.73% rate increase for all of Sunshine's customers. At the November 6, 2001 Agenda Conference the Commission refused to take action on the Utility's Second

Amended Application and directed Staff to further investigate the application and determine if there were other alternatives to funding the project.

In an attempt to find other sources of funding for this project, Staff, the Office of Public Counsel (OPC) and the Utility met with the Marion County Solid Waste Department personnel to discuss the contamination problems in the area and possible county funding of the project. As a result of these meetings, the Marion County Solid Waste Department proposed that an additional 38 lots with contaminated wells be served by extending the proposed water system. The Utility would have to amend its certificate before serving these customers. This extension was proposed to be funded by a combination of Department of Environmental Protection (DEP) grants and funds from Marion County.

At the April 23, 2002 Agenda Conference, using the Proposed Agency Action (PAA) procedure, the Commission approved, with modifications, Sunshine's limited proceeding application, and issued PAA Order No. PSC-02-0656-PAA-WU (PAA Order) on May 14, 2002. However, before that Order could be final, both Sunshine and OPC protested the PAA Order. The prehearing and hearing were scheduled for September 23, 2002 and October 9-10, 2002, respectively.

On September 19, 2002, OPC and the Utility submitted a Joint Motion seeking Commission approval of a Settlement Agreement and continuation of the hearing. The Settlement Agreement has thirteen provisions. The parties agree on the appropriate rates and subsequent rate reduction as set forth in Provisions 3 and 5 of the Settlement Agreement. In addition to the agreement on rates and rate reduction,

the parties agree that: 1) the original PAA Order No. PSC-02-0656-PAA-WU should be considered null and void; 2) rate case expense incurred subsequent to the PAA Order in the amount of \$20,000 shall be recognized for surveillance purposes only and should be amortized over four years from the date of the Commission's Final Order approving the Settlement Agreement; 3) Sunshine shall not file for a rate increase, except for price indexes and pass-throughs for a period of one year from the date of the order approving the Settlement Agreement; and 4) OPC will not petition the Commission to initiate and overearnings investigation of Sunshine for a period of one year from the date of the order approving the Settlement Agreement.

Provision 3 of the Settlement Agreement calls for a 6.11% rate increase over the existing September 2002 service rates. Provision 3 also states that the rate increase should not go into effect until the Utility's project is completed and operational. Further, Provision 3 calls for a corresponding, automatic rate reduction if the DEP grant and the cash contribution from Marion County exceed the amount required to construct the facilities (cost is estimated to be \$195,222) to connect 38 customers on private wells.

Provision 5 states that the rates will be reduced for the removal of revenues associated with the amortization of \$74,929 in rate case expense. When the limited proceeding rate increase has been in effect for four years, the rates shall be reduced to reflect the removal of revenues associated with the amortization of rate case expense. Not later than one month prior to the actual date of the required rate reduction for the expiration of the four-year recovery period, Sunshine shall file revised tariff sheets and a

proposed customer notice setting forth the lower rates and the reason for the reduction.

On October 22, 2002 the Commission issued Order No. PSC-02-1457-AS-WU, approving the Settlement Agreement. Upon verification that the water interconnection project has been completed and is operational, and that the rates have been properly established, this docket shall be closed.

**UTILITIES INC OF FLORIDA
DOCKET NO. 020071-WS**

Utilities, Inc. of Florida (UIF, Utility or Company) is a class A utility providing water and wastewater service to systems in the following counties: Marion, Orange, Pasco, Pinellas, and Seminole. By letter dated February 26, 2002, UIF requested test year approval in order to file an application for general rate relief for all its systems. 22 water and wastewater systems located in the above five counties. On June 28, 2002, the Utility filed minimum filing requirements (MFRs) to justify its requested rate increase. By letter dated July 19, 2002, the Utility was notified that the MFR's were deficient. In response to that deficiency letter, the Utility submitted additional explanations, schedules, and data on September 3, 2002. However, by letter dated September 11, 2002, the Utility was notified that the MFRs were still deficient. UIF corrected the remaining deficiencies on October 3, 2002. Thus, UIF was notified that October 3, 2002, was established as the official date of filing for the Utility's rate case.

On October 31, 2002, UIF materially amended its MFR rate schedules, and as such, the official date of filing was reset to that date. After discussions with the Commission's Staff concerning material billing errors in the MFRs, the Utility agreed

to extend the deadlines for Commission action on UIF's interim and final rate requests. By letter dated December 4, 2002, UIF waived the 60-day deadline on its request for interim rates for a period of 120 days. UIF also waived, for a period of 120 days, the eight-month deadline for final action on its application. Final rates were suspended by Order No. PSC-03-0030-PCO-WS, issued January 6, 2003, and interim rates were granted by Order No. PSC-03-0568-PCO-WS, issued May 5, 2003. The deadline for final action on UIF's application for general rate relief is October 28, 2003.

UIF requested that this rate case be scheduled directly for hearing. In support thereof, the Utility filed its direct testimony with its June 28, 2002, MFR filing. The Office of Public Counsel (OPC) served its Notice of Intervention in this docket and by Order No PSC-02-1026-PCO-WS, issued July 29, 2002, OPC's intervention was acknowledged.

By Order No. PSC-02-0657-PAA-WU, issued May 14, 2002, in Docket No. 991890-WU (gain on sale docket), the Commission found that a gain of \$61,669 was realized on the sale of UIF's Druid Isle water system and a portion of its Oakland Shores water system to the City of Maitland in Orange County. The Commission further found that a gain of \$269,661 was realized on the sale of UIF's Green Acres Campground water and wastewater facilities to the City of Altamonte Springs in Seminole County. By proposed agency action, the Commission ordered that the remaining customers of UIF would not receive recovery of the realized gains from the Maitland or Altamonte Springs sales. On June 4, 2002, OPC protested the Order and requested a hearing on the matter. By Order No. PSC-02-1467-PCO-WS, issued

October 25, 2002, this docket was consolidated with the gain on sale docket, and the gain on sale docket was closed. Pursuant to Order No. PSC-02-1808-PCO-WS, UIF filed its gain on sale testimony on February, 17, 2003.

The revenue increases proposed by UIF in its MFR filing, original and revised, are substantially overstated. Instead of being presented on a system-by-system basis, the revenue requirement calculations presented in the Company's MFRs consisted of the combined water systems and combined wastewater systems within each County. The eight sets of MFR calculations provided by the Company presented combined revenue requirements for each of the following: Marion County water, Marion County wastewater, Orange County water, Pasco County water, Pasco County wastewater, Pinellas County water, Seminole County water, and Seminole County wastewater. OPC's calculations show that reductions in rates on a combined basis are warranted for five of the eight above-identified revenue requirement calculations presented by the Company in this case.

On a combined basis, the Company's request, based on the Company's October 3, 2002 Second Revised MFR filing, results in an overall requested increase in revenues of approximately \$1.1 million. The OPC's calculations show that for all of the systems included in this case, on a combined basis, the overall result should be a decrease in revenues of \$149,247, not an increase. The OPC's position incorporates adjustments sponsored by its witnesses, along with the adoption of many of the recommendations presented by the Commission's Audit Staff in its Audit Reports.

This case has been fraught with problems resulting entirely from the Company's lack of diligence throughout the entire regulatory process. The Company was required to re-file substantial portions of its schedules several times in this case for failure to meet the Commission's minimum filing requirements. The Company was unable to follow some of the most basic and long-standing MFR instructions, such as the requirement that rate base be determined on a 13-month average basis. It became burdensome to keep track of the number of revisions the Company filed to several of its E schedules due to errors, omissions and discrepancies. Throughout this case, the Company was regularly late in responding to OPC interrogatory requests, in many cases extremely so. The OPC was required to file many Motions to Compel in this case to receive responses to interrogatories and requests for production of documents.

The extreme tardiness of the Company in responding to interrogatories and requests for production of documents, coupled with the frequent revisions to the MFR filing schedules and the Company's continued failure to follow the National Association of Regulatory Utility Commissioners (NARUC) Uniform System of Accounts, negatively impacted Citizens' analysis of the Company's rate increase requests. If anything, the result is that the revenue requirements calculated by the OPC for each of the County systems are likely overstated and additional adjustments beyond those presented by the OPC and Commission Staff may be warranted. As a result of the numerous problems caused by UIF throughout this case and its continued failure to be in compliance with long-standing Commission rules, at a minimum, OPC recommends that the Commission adopt its recommendation that the allowed

return on equity be set at the low-point of the ROE range of reasonableness.

The technical hearing for this case is scheduled for August 20-22, 2003, with briefs due September 22, 2003. The Commission is scheduled to decide the case on November 25, 2003 with a final order to be issued by December 15, 2003.

ACQUISITION ADJUSTMENT RULE

For approximately twenty years, the FPSC has taken the position that it will not recognize an acquisition adjustment absent extraordinary circumstances. An example of that policy is the case of Wedgefield Utilities, Inc. mentioned in this report, where the FPSC approved a rate base in excess of \$2.8 million, even though the purchase price for the utility was \$545,000 plus some contingent consideration.

Initially, the staff of the FPSC proposed reducing that policy to writing in the proposed rule. The Public Counsel, on the other hand, proposed to “split” the acquisition adjustment with the utilities, subject to certain limitations. This sharing would take place when a larger company purchases a smaller, troubled water or wastewater utility for an amount less than the book value of the purchased utility.

The Public Counsel argued that the proposal to split negative acquisition adjustments with utilities is a win-win proposition for both purchasing utilities and customers. Since splitting the acquisition adjustment would be the norm, this policy would do away with the need to regularly litigate whether a purchase involves extraordinary circumstances. Moreover, since the policy provides benefits for both the utility and customers, it should make cases less contentious.

The purchasing utility would receive an above market return on its investment. In addition to the purchase price, rate base would include half of the negative acquisition adjustment, up to a point where the return on the company’s actual investment is 150% of the market rate. Considering the fact that water and wastewater service is a true monopoly, the opportunity to receive up to a 50% premium on a fair return would be a strong incentive to a purchaser.

Customers would receive a benefit equal to half of the negative acquisition adjustment. Customers would still be required to pay a return on the purchasing utility’s actual purchase price plus one half of the negative acquisition adjustment. Additionally, customers might pay higher operational expenses resulting from lack of prior maintenance and additional costs to restore the system’s quality. Nevertheless, customers would be better off than under the current FPSC policy which is so heavily skewed in favor of the utilities.

After a series of workshops and hearings, the PSC adopted a rule that defined the regulatory treatment for acquisition adjustments. Under this rule, the PSC first differentiates between positive and negative acquisition adjustments. When the purchase price exceeds the net book value of the purchased Utility, the purchase results in a positive acquisition adjustment. When the purchase price is lower, it is a negative acquisition adjustment.

A positive acquisition adjustment is ignored for regulatory purposes, unless the Utility can demonstrate extraordinary circumstances. A negative acquisition adjustment when the purchase price exceeds 80% of the net book value will also be

ignored. When the purchase price is less than 80%, however, the amount above the 20% will be amortized over a five year period. This treatment can be contested by the affected Utility, which must demonstrate extraordinary circumstances to sustain its challenge.

**WATER MANAGEMENT SERVICES,
INC.
DOCKET NO. 000694-WU**

On June 6, 2000, Water Management Services, Inc. (WMSI, Utility or Company) filed a petition for limited proceeding to recover the revenue requirement associated with the cost of a new water main necessitated by the Department of Transportation's (DOT) decision to build a new bridge connecting St. George Island (WMSI's service territory) to the mainland (where WMSI's wells are located) and to demolish portions of the existing bridge on which WMSI's existing water main is located. The capital cost of the project, including other improvements required on the mainland, was initially estimated at \$6,223,334. As additional information became available, this estimate was revised to \$5,968,167 in response to Commission Staff (Staff) data requests. Based on DOT's original construction schedule for the bridge, the new main was projected to be complete in March 2003.

WMSI's initial petition requested authority to implement its requested rate increase in three phases. Phase I rates would be designed to recover revenue requirements associated with capital expenditures through December 2001. Phase II rates were originally to become effective January 1, 2002 and would be designed to recover revenue requirements associated with projected capital expenditures through completion of the

project. Phase III rates would become effective six months after the actual in-service-date of the project and would be designed to recover the revenue requirement associated with the actual capital costs incurred. For the first twelve months, Phase III rates would be subject to a credit or surcharge in the amount necessary to true up any over or under-recovery during Phases I and II.

By Order No. PSC-00-2227-PAA-WU, dated November 21, 2000 (Phase I Order) the Commission granted temporary Phase I rates designed to produce additional revenues of \$82,707 per year (an increase of 11.3%) based on the projected debt service requirements for estimated capital expenditures through June 30, 2002. The Phase I Order contemplated that Phase II rates would become effective in July 2002, but did not establish either a termination date for Phase I rates or a specific filing deadline for Phase II rates. In October 2001, WMSI filed a motion requesting approval (if necessary) to delay the setting of Phase II rates. By Order No. PSC-01-2188-PCO-WU, the Commission determined that no approval was required, but acknowledged WMSI's intent to delay the filing.

A number of changes have occurred since the filing of the original petition and the entry of the Phase I Order. Due to changes in DOT's bridge project schedule, the projected in-service date of the new main has changed from March 2003 to October 2003. The estimated capital cost of the new transmission main and the other approved work on the mainland has decreased from \$5,968,167 to \$4,935,646. WMSI was able to obtain financing through a State Revolving Fund (SRF) loan program administered by the Department of Environmental Protection (DEP). The principal amount of the approved SRF loans

is \$6,161,683, of which \$5,903,770 is available to pay project costs after provisions for capitalized interest and partial funding of a loan reserve account. This results in a weighted average debt cost of 3.46%, versus the 10.5% to 11.5% initially projected. WMSI's eminent domain case through which it was seeking to recover all or part of the cost of the new main from DOT was unsuccessful, and WMSI obtained no recovery from the state.

WMSI's ability to provide fire protection is limited by the size and layout of the distribution system, many of whose mains are not of sufficient size to provide for adequate fire flow. WMSI has determined that, given the new 12-inch transmission main to the island, fire flow protection can be substantially improved by installing approximately 17,700 feet of 6" and 8" mains, installing a new 200,000 gallon elevated storage tank, increasing high service pumping capacity, adding an emergency generator, and other plant improvements. The new 200,000 gallon elevated tank, which is larger than WMSI's existing tank, will be constructed at an elevation of 140 feet to the low water line, or 42 feet higher than the existing tank. This increased elevation will provide a pressure of 65 psi throughout the system, compared with the maximum pressure of 43 psi from the Utility's existing elevated tank. This new elevated tank, in combination with the additional and enlarged distribution lines and high speed pumps, will provide 500 gallons per minute on a sustained basis for 4 hours as a fire-flow reserve, a capability which the Utility does not now have. The total capital cost of the fire flow and related improvements is estimated at \$1,150,829.

The SRF loans were approved based on cost estimates made before the cost of the project was revised downward. As a result,

the SRF loans provide disburseable proceeds of \$5,903,770, versus the revised cost of \$4,935,646 for the 12-inch main and the other improvements on the mainland. If WMSI does not utilize the remaining SRF funds, it will lose access to \$968,124 of funding at a cost of just over 3%. According to DEP, it is unlikely that such funding would become available to WMSI in the future, given budgetary cuts and the existence of governmental projects competing for SRF loans.

Because the remaining available funding of \$968,128 under the SRF loans compares favorably to the \$1,150,829 cost of the fire flow and related improvements, WMSI has determined that it is prudent to proceed with these improvements and has amended the contract with Boh Brothers (the contractor for the 12-inch main) to include this additional work. In its Supplemental Petition, filed on May 14, 2003, WMSI requests that the Commission determine that these fire flow and related improvements are prudent, and that the cost of such improvements should be recovered through the rates set in this limited proceeding.

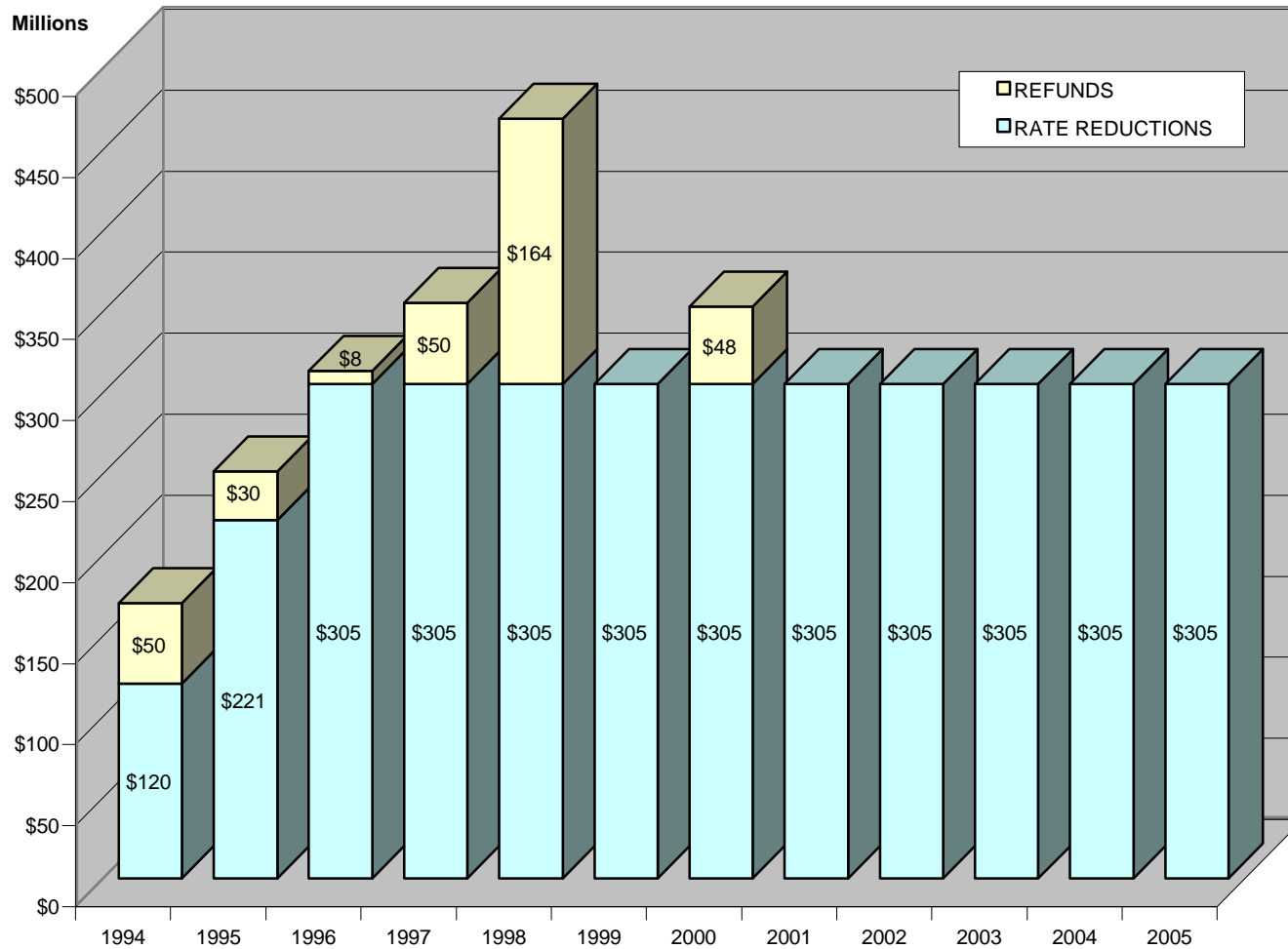
In its May 14, 2003 Petition WMSI requests that the Commission approve Phase II rates, to become effective as quickly as possible, but in no event later than October 1, 2003, that are designed to produce an additional \$472,951 above the revenues produced by Phase I rates. This requires an increase of 50% over Phase I rates, and represents a total increase of 67% over the rates that were in effect prior to Phase I.

According to the current schedule, the Commission's Staff (Staff) will file a recommendation concerning the Supplemental Petition on August 21, 2003. The Recommendation will be considered by the Commission at its September 2, 2003

Agenda Conference. The Commission's decision on September 2, 2003 will be issued as a Proposed Agency Action (PAA) Order on September 8, 2003. The customers will have 21 days or until September 29, 2003 to protest the proposed order and request a hearing concerning WMSI's Supplemental Petition and proposed Phase II rate increase. The Office of Public Counsel will meet with the customers to help them make an informed decision as to whether or not to protest the PAA Order.

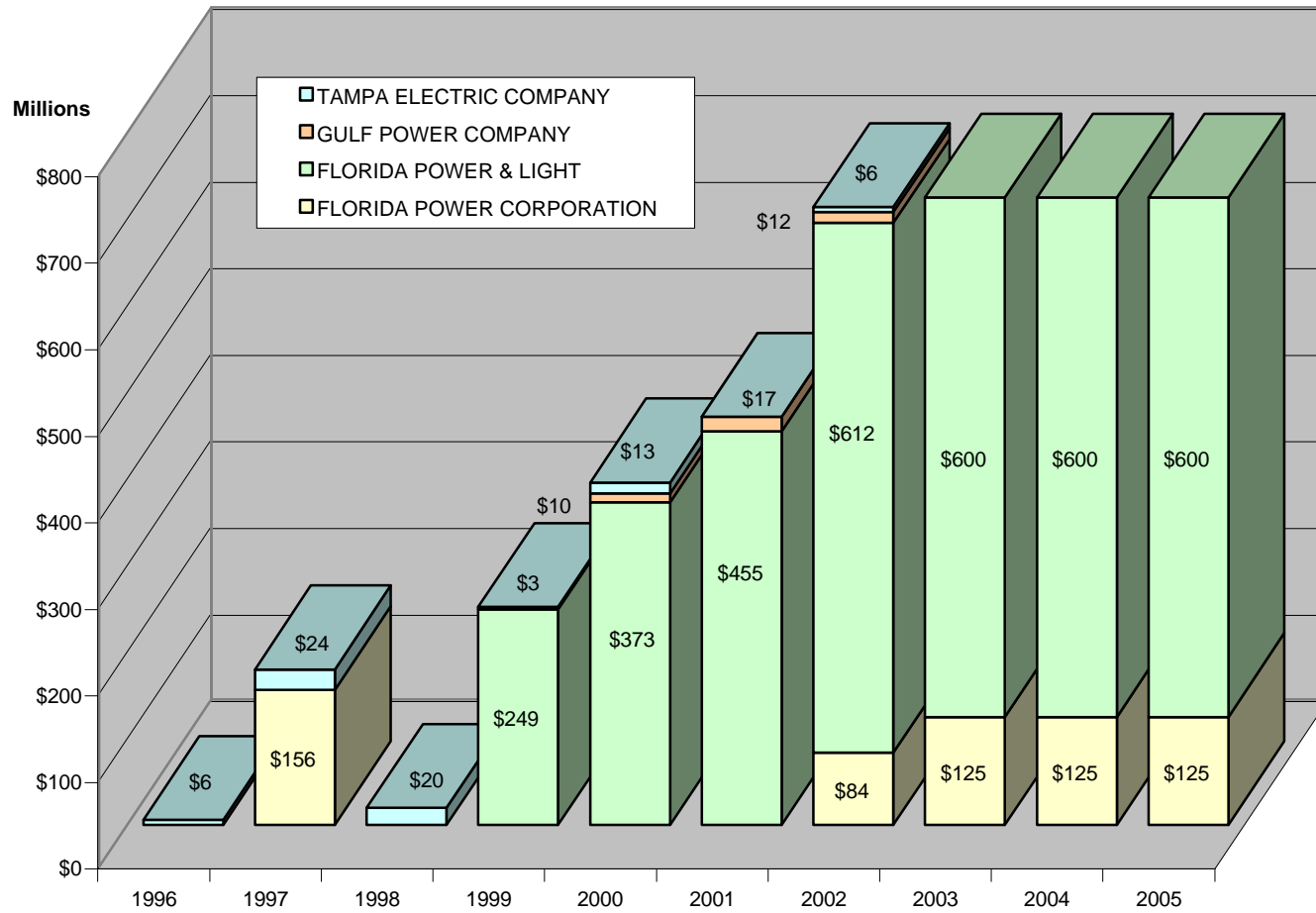
VI. CHARTS

1994 BELL SOUTH AGREEMENT



BellSouth Rate Reduction of \$305 million is permanent.

ELECTRIC RATE REDUCTIONS AND REFUNDS



The Florida Power & Light Rate Reduction of \$600 million is permanent.
 The Florida Power Corporation Rate Reduction of \$125 million is permanent.